

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

JOSELITO A. SMITH,)
)
Plaintiff,)
)
-vs-) Case No. CIV-22-1060-F
)
UNITED STATES DEPARTMENT)
OF LABOR,)
)
Defendant.)

ORDER

The court is in receipt of Defendant's Motion to Dismiss, filed March 21, 2023. Doc. no. 14. Defendant moves for dismissal of plaintiff's complaint, pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure, on the ground that judicial review of defendant's determinations with respect to plaintiff's workers' compensation claims "is clearly and conclusively precluded under the Federal Employees Compensation Act ("FECA"), 5 U.S.C. § 8101 *et seq.*" *Id.*, p. 1. To the extent plaintiff's complaint can be liberally construed as alleging any tort claims under the Federal Tort Claims Act ("FTCA"), 28 U.S.C. § 1346(b) and §§ 2671-2680, for work-related injuries, defendant also moves for dismissal of plaintiff's complaint on two grounds: (1) the FECA precludes any FTCA tort claims for work-related injuries; and (2) plaintiff failed to exhaust administrative remedies as to any FTCA tort claims.

Rule 7.1(g) of the court's Local Civil Rules provides:

Each party opposing a motion shall file a response within 21 days after the date the motion was filed. Any motion

that is not opposed within 21 days may, in the discretion of the court, be deemed confessed.

LCvR 7.1(g).

Accordingly, plaintiff Joselito A. Smith is advised that any response in opposition to Defendant's Motion to Dismiss must be filed no later than April 11, 2023.¹ If plaintiff fails to respond to defendant's motion by April 11, 2023, the court will deem the motion confessed and rule on the motion without further notice to plaintiff.

If plaintiff responds to the motion on or before April 11, 2023, defendant, pursuant to Rule 7.1(i) of the court's Local Civil Rules, may reply to any new matter raised in plaintiff's response within 7 days after the date the response was filed. Thereafter, the court will rule on defendant's motion without further notice to the parties.

IT IS SO ORDERED this 22nd March, 2023.



STEPHEN P. FRIOT
UNITED STATES DISTRICT JUDGE

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¹ Any response filed by plaintiff must comply with the requirements set forth in Rule 7.1 and Rule 5.2 of the court's Local Civil Rules.